

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

)
) No. 03 MDL 1570 (RCC)
) ECF Case
)

This document relates to:

BURNETT, *et al.* v. AL BARAKA INVESTMENT & DEVELOPMENT CORP., *et al.*, Case No. 03-CV-5738;

EURO BROKERS, INC., *et al.* v. AL BARAKA INVESTMENT AND DEVELOPMENT CORP., *et al.*, Case No. 04-CV-07279; and

WORLD TRADE CENTER PROPERTIES LLC, *et al.* v. AL BARAKA INVESTMENT AND DEVELOPMENT CORP., *et al.*, Case No. 04-CV-07280.

**DECLARATION OF ALAN R. KABAT
IN SUPPORT OF DEFENDANT SHEIKH HAMAD AL-HUSAINI'S
CONSOLIDATED MOTION TO DISMISS**

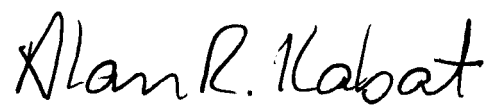
I am an attorney licensed to practice in the District of Columbia and am admitted *pro hac vice* in this matter. I am with the law firm of Bernabei & Katz PLLC, counsel to Hamad Al-Husaini. I submit this declaration to transmit to the Court the following documents submitted in support of Mr. Al-Husaini's Reply Brief in Support of his Motion to Dismiss:

1. Exhibit 1 to Mr. Al-Husaini's reply brief is a copy of the article published in the *Charleston Post and Courier (South Carolina)*, May 31, 2003, at page A-28.

2. Exhibit 2 to Mr. Al-Husaini's reply brief is a copy of the article by Nelson Tucker, "International Service of Process: Why Every Attorney Should Beware," *Bar Notes, San Fernando Valley Bar Association*, July/August 2003, at 15-16, available online at: <<http://www.sfvba.org/memberresources/barnotes/2003/july2003.pdf>>.

I declare under the penalties of perjury that the foregoing is true and correct to the best of

my knowledge and belief. Executed on September 26, 2005.

A handwritten signature in black ink that reads "Alan R. Kabat". The signature is written in a cursive, flowing style.

ALAN R. KABAT

Exhibit 1

Sheikh Hamad Al-Husaini's
Reply Brief

03 MDL No. 1570 (RCC)

Saudi hired to serve papers in Sept. 11 lawsuit reportedly killed

[FINAL Edition]

The Post and Courier - Charleston, S.C.

Author: TONY BARTELME

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Lawyers representing 3,600 victims of the Sept. 11, 2001, attacks fear that a man they hired in Saudi Arabia may have been slain while trying to serve legal papers on the suit's targets.

As a result, they've asked a federal judge to allow more than 30 defendants, including several Saudi billionaires, to be formally notified via legal notices in international newspapers.

"Plaintiffs do not want to risk another innocent life," they argued in a motion, which the judge granted Friday.

News about the Saudi process server shocked lawyers at Motley Rice in Mount Pleasant, the firm directing the Sept. 11 lawsuit.

"This was startling," said Michael Elsner, an attorney assigned to the case. "Talk about killing the messenger."

The process server was identified as Ahmed Salah, who had an office in Riyadh, the Saudi capital.

Salah was hired last November by a California company, Process Service Network, to serve legal papers on defendants in Saudi Arabia and the United Arab Emirates. The lawsuit alleges that al-Qaida and the Sept. 11 hijackers received substantial support from charities, wealthy Saudi businessmen and members of the Saudi royal family.

Nelson Tucker, president of Process Service Network, said that he lost contact with Salah and hired a private investigator to find out what happened. The investigator reported back that Salah had been killed in early February.

Salah was killed near Haradh, Saudi Arabia, on the main road to the United Arab Emirates, said William Riley, an attorney with Young, Riley, Dudley & DeBrot in Indianapolis, a law firm assisting Motley Rice.

Riley said investigators learned of Salah's death from people who read about the incident in a local Saudi newspaper. The newspaper reportedly said Salah was killed while carrying legal documents on behalf of an American client.

Many questions remain. Investigators with Motley Rice have searched without success for the newspaper story and haven't received confirmation about what happened from Saudi authorities.

"It has been extraordinarily difficult to get information," Elsner said.

Riley added, "there's not an absolute connection to his death and this case, but the inference is that he was killed while performing his job."

Tucker, whose company specializes in serving legal papers overseas, said one plausible scenario is that the man faked his own death.

In some foreign countries, process servers are bribed by their targets and then disappear. "We did pay him in advance, so he may have left town and put out this rumor himself. There are a lot of unknowns."

Courts in the United States require defendants be notified in writing and usually in person that they're being sued.

Being served with a lawsuit can provoke emotional response, and Tucker said he knows of cases in which process servers were injured or killed in the United States.

"It's usually pretty routine in most regions of the world, but in some areas (like the Middle East), few people do it because of the danger."

He said that during the past eight years, he found only two companies in Saudi Arabia willing to serve legal documents. "The other process server who we have used in the past cannot be located," he said.

A representative from the Saudi Arabian embassy in Washington, D.C., said Friday that he wasn't aware of the incident, adding that "we don't have licensed process servers in Saudi Arabia."

Filed last summer, the lawsuit infuriated many Saudis. Columnists and clerics urged Saudi investors to move money out of the United States and boycott American goods.

One defendant, Prince Sultan bin Abdul Aziz al Saud, who is second in line to the throne, filed a response calling the lawsuit a "broadside indictment of Saudi government, religion and culture."

Saudi Arabian connections to al-Qaida were put under a microscope after the Sept. 11 attacks. Fifteen of the 19 Sept. 11 hijackers were Saudis, as is Osama bin Laden.

Three weeks ago, attackers believed to be associated with al-Qaida shot their way into three housing compounds in Riyadh and set off a series of suicide car bombs, killing 34 people, including eight Americans.

In a motion, lawyers for the Sept. 11 victims said that because of "cultural bias and the hostile atmosphere present in the Middle East," legal notices in newspapers would be a more appropriate way to notify at least 30 overseas defendants.

On Friday, U.S. District Court Judge James Robertson issued an order giving the Sept. 11 victims permission to notify defendants by placing legal notices in two newspapers, the English-language International Herald Tribune and Al Quds Al-Arabi, a Middle Eastern newspaper that published some of bin Laden's anti-American "fatwas," or religious decrees.

Credit: Of The Post and Courier Staff

Exhibit 2

Sheikh Hamad Al-Husaini's
Reply Brief

03 MDL No. 1570 (RCC)

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BarNotes

A Publication of the
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New Board of Trustees Nominated

The San Fernando Valley Bar Association Nominating Committee has announced its slate of candidates for the 2003-2004 Board of Trustees. Incumbent SFVBA Secretary Alice Salvo was nominated for President-Elect and family law attorney Richard Lewis, the current Treasurer, was nominated for Secretary. Van Nuys social security and disability lawyer Patricia McCabe will run unopposed for Treasurer. James Felton will automatically assume the Presidency on October 1, 2003.

The Committee nominated ten candidates to fill six open seats on the Board. Five sitting Trustees are seeking reelection: Seymour Amster, Caron Caines, Cynthia Hogan, Kevin Rex, and Myer Sankary. Other members nominated are Donna Laurent, a member of the LRIS Committee; SFVBA Personnel Committee Co-Chair Everett Meiners; business law attorney Robert Schaap; Healthcare Law Section Chair Alan Sedley; and Intellectual Property Section Co-Chair Mishawn Yarovesky.

SFVBA President Steve Holzer comments, "The Nominating Committee did a terrific job of selecting candidates who have each contributed to the growth and success of our organization. They represent a cross-section of our sections, areas of practice, and our community."

In accordance with the SFVBA by-laws, additional nominations for trustee or any office, except that of President, may be made by filing with the SFVBA Secretary Alice Salvo a written nomination, signed by at least twenty active members of the Association in good standing. Petitions must be received by July 31.

Ballots will be mailed to all attorney members in mid-August. The results of the election will be announced September 9. The new Board of Trustees will be sworn in at the Installation Dinner on September 20 at the Warner Center Marriott. 🏠

Calendar of Events Page 19

Members to Vote on A mended Bylaws

At its May 13, 2003 meeting, the Board of Trustees adopted widespread changes to the Bylaws of the San Fernando Valley Bar Association, the first revisions to the Association's governing documents since 1995. The amendments will be included on the ballot to be sent to attorney members in August. The revisions include the addition of a mission statement and purview; a clarification of the Associate Member category and expansion of law student membership; increase in the size of the Nominating Committee to include the President-Elect; an update in the method of notice to members of the Association to include fax transmissions and electronic mail; as well as guidelines for Sections and Committees in representing the Association and various technical and clarifying amendments.

SFVBA Accepting Applications for Committees

The SFVBA offers members the opportunity to contribute to the legal profession and the public by volunteering to serve on one of twenty-three committees. President-Elect Jim Felton is currently issuing appointments for the new Bar year commencing October 1. Members are encouraged to participate in the following committees: Bench-Bar, Conference of Delegates, LRIS, Membership & Marketing, Personnel, Programs/Special Events, Public Service, and the Executive Committees of the thirteen sections. Any member wishing to serve on a committee can email Jim Felton at jfelton@greenbass.com. 🏠

International Service of Process: Why Every Attorney Should Beware



BY NELSON TUCKER, PRESIDENT OF ATTORNEY SERVICES OF SOUTHERN CALIFORNIA

Not only did law school minimize the importance of the laws related to service of process, but they did not even mention international service.

Now, with the world shrinking and the global economy expanding, litigation between parties in the United States and foreign countries is increasing at a substantial rate annually. No doubt, within a short period of time, most U.S. attorneys will be faced with having a foreign defendant served with legal documents. What do you do, then?

Most international disputes arise from such areas as personal injury, trademark and patent infringement, products liability, family law, collections, and real estate matters.

International service of process seems to be a maze until you discover that certain treaties and local laws may apply. The most widely used treaty is the "Hague

Service Convention" which outlines the methods of service in a specific country. Another "formal" method of international service is by Letters Rogatory, a cumbersome, expensive and time-consuming method that should be used only as a last resort.

Understanding the procedures for compliance with applicable treaties and local laws will avoid civil and criminal penalties against the attorney and client who violate the law, albeit unknowingly. In most instances, California law does not apply to service outside the United States, so it is essential that the process begin with a complete understanding of the laws of the country involved.

Some nations, such as Germany, Japan, Switzerland, Korea and Italy currently outlaw service by private party. Others such as Taiwan, Australia, The Philippines, and Saudi Arabia do not have treaties in force and allow serv-

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David R. Hagen, Past SFVBA President

ice by an "informal" method, such as by private process server.

Many nations require the court documents to be translated into the official language of that country, while others accept an English version. Translation costs can often exceed the fee for service so it is vital to consult with a foreign service of process specialist prior to filing the case, if possible.

The greatest challenge for most international services is meeting court-established deadlines. An extension of time for completion of service can normally be obtained by providing the court with a proper declaration from the process server.

Although few private process servers understand the rules related to international service, some specialize in serving the needs of clients in foreign markets where the maze is simplified. ⚡

Nelson Tucker is President of Attorney Services of Southern California. He is also the founder of Process Service Network, based in the San Fernando Valley with offices in London, Taipei, Manila, Bombay/Mumbai and Sao Paulo. The firm specializes in hard-to-serve and international service of process. Tucker has authored 2 books on service of process and regularly conducts MCLE courses on service of process. He is an Associate Member of the San Fernando Valley Bar Association. His website is www.processnet1.com.

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The SFVBA invites members to submit articles for Bar Notes. Articles should be educational in nature, and can be tailored for the new practitioner or experienced lawyer. The typical article is 800 to 1,200 words in length, and contains no footnotes. Articles can be submitted electronically to epost@sfvba.org. For additional guidelines, contact Liz Post at (818) 227-0490 ext. 101.